p 18

G.M. = 1911

205 of 1911

Sum. 1 - 3

Cessation of the exclusive privilege granted in respect of an invention for "An Improved Process of Taxidermy by Theobald Dros.

→

G. R. S. 59]

GENERAL AND REVENUE SECRETARIAT.

1911-12.
(Genl. Misc.)

File No. 205-11

Serial Nos. 1-3

Papers Filed.

Month March 1912

SUBJECT.

Cessation of the exclusive privilege granted in respect of an invention for 'An Improved process of Taxidermy' by Theobald Bros..

PREVIOUS REFERENCES.

For 33-07/08 & 1-17 for 08
Genl. Sec. No. 47 of 08/09

LATER REFERENCES.

209 -

K. N. Krishnaiyangar 2-4-12

G.R.S. 11] 191/-12

GENERAL AND REVENUE SECRETARIAT.

(Jen : Mus)

NOTES.

Jen File No. 205 11/12

~~Revocation~~ Cessation FILE HEADING.

~~Cancellation~~ of the exclusive privilege granted in respect of an invention for "An Improved process in Taxidermy" by Meobald Bros:

From

The Registrar, Chief Court of Mysore.

No. 2773/209 Dated 12 . 1 . 12 Received 13 . 1 . 12

Diary No. 289	Enclos. / Spare Copies.	Serial No. /

BRIEF ABSTRACT OF LETTER.

Forwards copy of Order in Civil Misc Case No 8 of 1909-10 on the file of the Chief Court of Mysore as required by Sec 39 of the Mysore Inventions + Designs Regn XI of 1894

NOTES AND ORDERS.

Copy put up

The needful entries required under Sec 39 of the Mysore Inventions + Designs Regn have been made.

The communication under disposal may be filed.

Submd 20.1.12

Should not the original Order, granting the exclusive

NOTES—First Sheet.

GPB—30,000—12-8-11

Serial No.

2896

privilege be cancelled by issuing another notification? for the information of the pub submitted.

VS. 41
20-1-1912

2896

Put up the file relating to the grant of the privilege in question

20.1.12

The file called for is subd?

GA 99
22.1.12 VS. 41

* Please see note on
on slip
file. 23.2.11

File & Sc subd
with all the papers
GA
25.1.12

The steps to be taken by Govt in cases of the kind now in question are set forth in Secs 39 & 40 of the Regn, and relate only to entries to be made in the Register of Inventions & maintained in the Govt Office. The publication of any notification in the Gazette cancelling the privilege previously granted is not prescribed. It has however to be observed also that the publication of a notification is not prescribed even for the grant of the privilege under Secs 8 to 11, though it has been the usual practice to publish

NOTE.—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

G. M. File No. 205 of 1911-12

Serial No.

such notifications in the Gazette.

In these circumstances it is a matter for consideration whether a notification is necessary in the case under consideration

To Br III for favour of remarks

27.1.12

R 1 31.1.12

31/1/12 J 2nd 97

Submitted

The Regn only requires an entry to be made in the Inventions Register in such circumstance. It no where makes it Obligatory to publish it in the Gazette. This is so even in the case of Specifications filed. Still that fact is notified. In Br India even in cases where the term exclusive privilege would lapse by reason of non-payment of proper fee as prescribed from time to time, the fact that the exclusive privilege has lapsed is published. ~~How for though notification~~ (Please see Govt of India Gazette of 6/1/12 Part II P. 5). A similar course may perhaps be followed in this case also.

Ld The Gazette may be requested accordingly

8/2/12 SN (11)

I think it desirable

NOTE—Contn. sheet.

GPB—50,000—12-8-10.

Serial No.

that a notification that the privilege has ceased shd be published The public shd know that the process is no longer a monopoly

To Bo V

12/2/12

Please put up a draft note accdly

bm 13/2/12

Offg Sub'a GA 99 14.2.12 VS. 41

Secy)

bm 15/2/12

Issue

CSB 14/3/12 MG

2 Do The Compiler, Mysore Gazette No G 4980 & 22.3.12.

Notifies the cessation of the Exclusive privilege in respect of their invention for "an improved process of saccharum" granted to Messrs Theobald Bros under notifn No G S 007 G.M 33-07-10 & 25-2-08.

3 Do. Messrs Theobald Bros. No G 4981 & 22.3.12

Forwards copy of the above for information

NOTE— Contn. sheet.

GPB—50,000—12-8-10

GA

V

18/1

~~190~~ 9/1.12.

From The Regr: of the
Chief Court of Mysore.

To The Secy: to Govt:
Genl & Rev: Depth

Dated 12th January 1912

Despatched — do —

Received

General No. 2773

No. 209

Enclosure No. One.

Forwards copy of order in Civil misc: Case no: 80 of 09-10 on the file of this court as regd: by Sec: 39 of the Mysore Inventions & Designs Regn: (XI of 1894)

No: 2773/209 Encl one.

(1)

Chief Court of Mysore,

Bangalore, dated 12th January 1912.

12/1/12

From,

DIARY No. 28/96

The Registrar of the
Chief Court of Mysore,
Bangalore.

1911-1912
SECTION Gen: Mis
FILE No. 205 of 1911-12
SERIAL No. 1

To,

The Secretary to Government,
General and Revenue Departments.

Sir,

I am directed to forward herewith a copy of order in Civil Mis: Case No: 8 of 1909 - 10 on the file of this Court as required by Section 39 of the Mysore Inventions and Designs Regulation (XI of 1894).

I have the honor to be,
Sir,
Your most obedient servant.

Registrar.

P.L.

NBI.

(2)

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 8th day of January 1912.

P r e s e n t

Sir Stanley Ismay, K. C. S. I., Chief Judge

and

Mr. Justice P. S. Krishna Rao, Rao Bahadur

and

Mr. Justice K. S. Chandrasekhara Aiyar, Offg: Judge.

Civil Mis: Case No. 8 of 1909 - 10

E. M. Van Inghen.....Petitioner.

(By Mr. J. C. S. Lawarance)

Vs.

Theobald Brothers.....Opponents.

(By Messrs. L. Srinivasiengar and V. Venkata Char)

Petition praying for a declaration that the opponents have not acquired the exclusive privelege granted to them by the Mysore Government in respect of the invention for ' an improved process in taxidermy'.

This petition coming on for hearing on Friday, the 27th day of October 1911, the Court pronounced the following : -

O R D E R

Mr. Justice P.S. Krishna Rao, Rao Bahadur.

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The facts of this case are briefly these . On the 19th day of February 1908 the opponents filed a specification of what they claimed to be a new invention for the casting and mounting of heads of animals in paper or papier mache casts instead of the old clay models, and obtained a patent therefor from the Government of Mysore under the Mysore Inventions and Designs Regulation No. XI of 1894. The petitioner who is a taxidermist and who has been practising taxidermy for nearly 25 years in the city of Mysore having been found to use the same process, the opponents filed a suit in the Court of the District Judge at Mysore for an injunction restraining him from using the said process and for damages caused to them by the petitioner's infringement of their rights as such patentees.

During the pendency of the suit, the petitioner filed the present application under section 50 of the Regulation, asking for a declaration that the opponents had not acquired the exclusive privelege granted to them by the Mysore Government, since the invention set forth in the specification filed by them was not, at the date of the delivery or receipt of the application for leave to file the specification, a new invention within the meaning of Part I of the Regulation, that the opponents were not the inventors thereof and that for many years before

(A)

the date of the said application the invention in question was well known and publicly used in the United Kingdom of Great Britain and Ireland, and in British India. The petitioners further alleged that the said invention was of no utility.

The proceedings in the Court of the District Judge at Mysore were thereupon stayed and the opponents were asked to show cause why the application filed by the petitioner in this Court should not be granted. The opponents then filed a written statement in which they denied that the process described in the specification filed by them was well known or publicly used either in the United Kingdom of Great Britain and Ireland or in India before the date on which they applied to the Mysore Government for a patent in respect of it, and they added that they were the first inventors of the said process and that the invention claimed by them was novel, useful and the proper subject of a patent.

The following issues were thereupon framed : -

1. Is the invention set forth in the specification of the opponents of no utility as pleaded by the petitioner ?
2. Was the said invention not a new invention within the meaning of Part I of the Mysore Inventions and Designs Regulation (XI of 1904) on the date of delivery or

(5)

receipt of the application by the opponents for leave to file the specification as pleaded by the petitioner ?

3. Were not the opponents the inventors of the process in question ?

4. Was ~~~~ the said process well known and publicly used in the United Kingdom of Great Britain and Ireland or in British India before the date of the application by the opponents for leave to file the specification ?

5. Is there any wilful or fraudulent mis-statement in the opponents' said application, and if so, what ?

6. Is the exclusive privelege granted to the opponents liable to be cancelled ?

7. To what relief is the petitioner entitled ?

The case first came on for hearing before a single Judge of this Court, but it was ruled that it should be disposed of by the Court consisting of all the Judges, and it was thereupon referred ~~~~ to the Full Bench. The Full Bench, after hearing the parties, passed an order directing that the said issues be referred to the Court of the District Judge of Mysore for trial.

The District Judge has now submitted his findings on the said issues and they are all in favour of the petitioner.

(6)

It is contended by Mr. L. Srinivasa Iyengar on behalf of the opponents that the case should be sent back to the District Judge for a new trial, as he refused to give the opponents an opportunity to examine themselves and to cross examine the petitioner. The record shows that the opponents were, on the 16th February 1911, served with a notice that the case would be taken up for hearing on the 23rd March following and that they should have all their evidence in readiness to be produced before the Court on that day. Although there was an interval of more than one month between the date on which they received the notice and the date fixed for hearing, the opponents took no steps during that period to apply to the Court to have the case adjourned to some other date on the ground that on the date fixed their advocates Messrs. Srinivasa Iyengar and Venkata Char would not be able to attend the Court on account of some marriages in their house. Nor did they, by writing to the petitioner's advocate or otherwise, obtain his consent to moving the Court on the date of hearing for an adjournment being granted. Neither did Mr. Lakshmi Narasimha Iyengar who appeared for the opponents on the date of hearing assign any satisfactory reason in support of his application for an adjournment. Under these circumstances, I am not prepared to say that the District Judge exercised his

discretion

(7)

discretion improperly when he refused to grant the adjournment asked for by the opponents.

Passing to the merits of the case, the first and most important question for decision is whether the invention set forth in the opponents' specification was a new invention within the meaning of Part I of the Mysore Inventions and Designs Regulation (No. XI of 1894) at the date of the delivery or receipt of the application for leave to file the specification.

The following is the description given of the invention:

" The invention consists of modelling in clay like the old pro-
" cess two or different sizes of heads of each species of ani-
" mals and taking moulds of the same with Plaster of Paris
or cement concrete etc., and paper casts are taken by pasting
" layers of paper with poisoned paste to prevent the attacks
"of insects or by making the paper into pulp, mixing with paste
" and put into the mould, thick paper card board and straw
" board being used.

" In the case of horned animals, that portion of the
" skull carrying the horns is sawn off and fixed with screws
" or bolts and nuts to the paper cast. A light board is cut
" to the shape of the neck at the base and fixed with wire

nails

(8)

" nails, and the whole is painted over, both inside and outside
" with water proof paint. When dry the mask or skin is drawn on
" and fixed with tiny wire nails, artificial glass eyes inserted,
" and the nose etc., painted and finished.

" In cases where heads are set up with open mouth showing
" the teeth etc., as tigers, panthers, and other carnivorous ani
" mals, the same thing is done with the jaw bone carrying the
" teeth.

Having thus described the nature of the invention, the opponents claimed as novel : -

" (1) The employment of paper or papier mache casts instead
" of the old clay models.

" (2) The poisoning, not only of the mask or skin, but the
" material of the cast.

" (3) The method of fixing the horns and teeth to the paper
" casts.

" (4) The effect of the drying of the skin or mask in strengthening the cast and in the case of open mouth heads in holding
" the lips together and giving them a natural curve.

" (5) The casts being painted with waterproof paint is not
" susceptible to damp. "

(9)

The question therefore resolves itself into this : - whether any and if so which of the above mentioned items are novel. ~~not~~ In dealing with this question, it is necessary to understand what is meant by ' novelty'. When we speak of an invention being new, we mean that it must not have been known and in use before the patent and that it is new so far as the public are concerned, that is, so far as the means of information of the public goes; and it is immaterial by what means the public become possessed of it. The law on this subject is thus laid down in the case of Patterson V. Gas Light and Coke Company (1875 L.R. @ III A.C. 244) : - "If the public once become possessed of an invention by any means whatever, no subsequent patent can be granted for it either to the true and first inventor himself or to any other person, for the public cannot be deprived of the right to use the invention; and a patentee could not give any consideration to the public for the grant, the public possessing everything he could give."

Bearing this definition in mind, I shall now proceed to deal with the first item and see how far the allegation of the opponents that it is a new invention, can be sustained.

It may be conceded that in a case such as the present,

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the burden of proving want of novelty is on the person who seeks to invalidate the patent; but that burden, I am clearly of opinion, has been satisfactorily discharged in this case. According to the evidence of Mr. Rowland Ward which, in my opinion, is entitled to great weight since he is a man of considerable experience and has himself practised taxidermy in England for upwards of 30 years, the employment of paper or papier mache casts instead of the old clay models is not a new invention, the same having been known to the trade for very many years. His testimony is supported by the fact that a full description of the process is given in all the standard works on the subject of Taxidermy [vide pages 157 and 158 of Montagu Browne's book on " Artistic and Scientific Taxidermy and Modelling" and pages 151 to 154 of Hornaday's work entitled "Taxidermy and Zoological collecting"]. These books were published in England and were accessible to the British public long before the date on which opponents applied for leave to file their specification. A similar description is also given in John Rowley's book entitled " The Art of Taxidermy." This last mentioned work is no doubt an American publication; but I see no reason to suppose that it does not circulate as widely in England as it does in America.

I have therefore no hesitation in holding that the

first

first item in the specification filed by the opponents does not possess the merit of novelty.

The second item of the specification relates to the poisoning not only of the mask or skin, but also of the material of the cast. According to the evidence of Mr. Rowland Ward, poisoning is well known to taxidermists in England and he himself was using that method years ago, although he has now given it up on the ground of its being useless as well as dangerous. That it is an old and well known process appears also from the description given of it by Montagu Browne and Hornaday in their works already referred to; while as regards its inutility and dangerous character, the opinion of Mr. Rowland Ward is fully shared by Montagu Browne (vide pages 64 to 76 of the latter's book).

It was contended by Mr. Venkata Char on behalf of the opponents that the process relied on by them differs from that described by Montagu Browne and other taxidermists in that the opponents use bisulphate of copper instead of soaps, powders and other substances which have arsenic in them. But this difference is only a colourable one, since it amounts to the substitution of one chemical equivalent for another already known to the trade.

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In this respect the present case is an almost exact parallel to that of Mc Lay V. Lawes & Co. (1905, 22P. O.R. 201), where a person obtained a patent in respect of an invention which consisted in utilizing the calcium sulphate obtained as a waste product in the manufacture of tartaric acid in conjunction with agglutinating materials to form a non-conducting "cagging" for boilers, and it was held on proof being given that the use of calcium sulphate as obtained from other substances was well known for this purpose that the patent was invalid.

The third item of the specification refers to the method of fixing the horns and the teeth to the paper casts. The novelty claimed in respect of this method is that in the case of horned animals the opponents do not saw off the horns, but only that portion of the skull which carries the horns and then fix it with screws, bolts and nuts to the paper cast, while in the case of open mouthed animals such as tigers, panthers and other carnivorous animals, they do the same thing with the jaw bone carrying the teeth, This method also, according to the evidence of Mr. Rowland Ward, is one well known to the people of the trade in England, and it is described at pages 151 and 167 respectively of Montagu Browne's and John Rowley's publications referred to above.

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It is contended on behalf of the opponents that there is a slight difference between the method adopted by the opponents and that followed by other taxidermists, and in support of this contention two diagrams have been produced before this Court, one showing the method used by the opponents and the other by John Rowley of America; but there is not a particle of evidence to show that the method used by the opponents differs in any material respect from that used by John Rowley; but assuming that there is a difference, the difference is only colourable, the opponents having taken the pith and essence of the invention already known to the public and arriving at the same result by means of a process which is substantially the same as that used by the people of the trade in England and America.

As regards the fourth and fifth items, it is admitted that there is nothing new in them.

The result then is that the second, third, fourth and fifth issues should be found against the opponents.

The first issue should also be decided against them, since the test of utility, according to the authorities, is that the invention relied on must be a sufficient advance or improvement upon what has already been known to the public so as to

add

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add to the public stock of knowledge to a material extent, and the invention claimed by the opponents can hardly be said to possess this merit.

The petitioners are therefore, in my opinion, entitled to a declaration under section 36 (1) of the Regulation that the opponents have not acquired the exclusive privelege granted to them in respect of the invention mentioned in their specification. The opponents should pay the Petitioner's costs through out. I would fix advocate's fee in this case at Rs: 160.

sd/ P. S. Krishna Rao

J u d g e .

Mr. Justice Chandrasekhara Aiyar.

I quite concur in the conclusion arrived at by Mr. Justice Krishna Rao.

sd/ K. S. Chandrasekhara Aiyar

Offg: Judge .

~~Sir Stanley Jeney, K. C. S. I.~~

The Chief Judge

I concur and I only wish to add with reference to the third item that I am unable to understand what it is which is

claimed

(15)

claimed to be a novelty. The primary requirement of a specification is that it must set forth in clear language free from ambiguity the nature of the invention and the way in which it is to be carried into effect. In this connection all that is stated in ~~this~~ the specification of the opponents is that a portion of the skull carrying the horns is sawn off and is fixed with screws or bolts and nuts to the paper cast, a light board being cut to the shape of the neck at the base and fixed with wire nails. The process of cutting off a portion of the skull with the horns attached is well known to every taxidermist and I am quite unable to see in what way the opponents' method of fastening the horns to the cast or mould is any improvement on the methods ordinarily used. The method described in Rowley's Art of Taxidermy is as follows : - The horns are ~~sa~~wed out of the skulls leaving them attached with a triangular piece of the skull. A paper head is then cast and a block of soft pine wood is introduced in to the mould to come just underneath where the horns were sawed out of the skull. The antlers are screwed fast to the top of the cast, the screws running down into the wooden block on the inside of the cast skull. The methods described in other works on Taxidermy only differ in minor points of detail.

Sd S. Ismay

Chief Judge.

Amount

(16)

Amount of costs payable by opponents Theobald Brothers to Petitioner E. M. Van Inghen is as follows : -

	Rs.	As.	P.
Court fee on petitions.....	4	- 0	- 0
,, ,, on Power of Attorney	2	- 0	- 0
,, ,, on Processes	2	- 8	- 0
Advocate's Fee.....	160	- 0	- 0
Transcription fees.....	9	- 9	- 4
Cost of paper.....	0	- 1	- 9
Printing charges.....	14	- 13	- 0
T o t a l	₹ 193	- 0	- 1

Sd/ V.A. Raja Ratna Mudaliar

R e g i s t r a r.

A.V.

'True copy'

Registrar

13.

G.R.S. 26] Published on page 97 of Part I of the Gazette of 21.3.12 2 Dfts

Fil No. 205-1

Serial 2

Diary No. of letter replied to 2896

3 copies of the Notn

No. G 4980.

General and Revenue Secretariat

( )

the 19

22.3.12

Signed by Mr Ramaswamayya

~~To~~ Notification.

Whereas the Chief Court of Mysore have, in Mis: Case No 8 of 1909-10 on the file of that Court, ordered under section 36 (1) of the Mysore Inventions and Designs Regulation No XI of 1894 that Messrs Theobald Brothers, naturalists and Taxidermists, Mysore, have not acquired an exclusive privilege in respect of their invention for "an improved process in taxidermy," it is hereby notified that ~~so long as the said~~

over.

SUBJECT.

~~order ordinances in force~~ the said

applicants shall cease to be entitled

to the exclusive privilege granted

to them under Notifn No. G 5007

Gen 23-407-10

dated the 25th Febr. 1908 in respect

of the above mentioned invention.

By Order,

ISB
14/3/12

~~M/15/2/12 for Offg Secretary~~

VS. 41

may be omitted -
VS
pp.

ab

List of enclosures,

Copied by SEC

Examined by ISB

GPB—10,000—28-2-11.

(19)

G.R.S. 26]

2 Offs

8m Fil No. 205-11

Serial 3

Diary No. of letter replied to 2896

No. G 4987. Enc 1

General and Revenue Secretariat

( )

, *the* 19 .

22. 3. 12

To

Messrs Theobald Brothers,

Naturalists & Taxidermists,

Mysore.

Signed by Mr Ramaswamayya

Gentlemen,

I am directed to forward herewith for your info. copy of Notfn No. 4980 dt 22.3.12 notifying the cessation of the exclusive privilege granted to you on the 25th Feby 1908 in respect of your invention for "an improved process in taxidermy."

I have &c

over.

for Secretary

SUBJECT.

ab

for 15/2/12 VS. 41